S.B.CIVIL WRIT PETITION NO.4109/2000

R.C.Purohit vs. State & Ors.

DATE OF ORDER : 29/1/2007

HON'BLE SHRI RAJESH BALIA, J.

Mr.J.P.Joshi, for the petitioner.
Mr.L.R.Upadhaya, for the respondents.

Heard learned counsel for the parties.

This petition is directed against the disciplinary proceedings and orders passed in disciplinary proceedings against the petitioner by which the petitioner was visited with punishment of stoppage of one grade increment without cumulative effect after holding an inquiry into the charges levelled against the petitioner vide charge sheet dated 7/10/1995 (Annex.10) in terms of Rule 17 of the CCA Rules.

Disciplinary Authority imposed punishment by finding the charge against the petitioner proved vide order dated 8/8/1997 (Annex.12). The appeal against which was dismissed by the Appellate Authority on 18/2/1999 (Annex.13) and review application was also dismissed by the Reviewing Authority on 29/9/2000 (Annex.14).

The material produced in this petition consist of charge sheet served on the petitioner, defence taken by the petitioner and subsequent orders passed by respective authorities

noticed hereinabove. Another important document which is on record is the award of labour court dated 4/1/1989.

As it shall presently be noticed, it is a clear case of non application of mind, even without caring to see the relevant dates, so much so that if the award & charge sheet is read together no foundation for issuing charge sheet is made out.

Charge sheet dated 7/10/95 (Annex.10) which contains the only charge levelled against the petitioner, reads as under:-

> "1- यह कि उक्त श्री आर.सी. पुरोहित, सहायक अभियन्ता, जन स्वास्थ्य अभि. विभाग, ड्रिलिंग उपखण्ड प्रथम, नागौर में दिनांक 1.1.83 से 11.10.84 तक सहायक अभियन्ता के पद पर पदस्थापित थे तब श्रम न्यायालय, बीकानेर के वाद संख्या 2/87 एव 3/87 जिसमें पक्षकार क्रमश: श्री केवल कुमार पुत्र जयनारायण वर्मा, इन्दिरा कोलोनी, नागौर बनाम सहायक अभियन्ता, ड्रिलिंग हैण्ड पम्प उपखण्ड प्रथम, नागौर एवं श्री मोहम्मद हबीब पुत्र श्री मोहम्मद अली बनाम सहायक अभियन्ता, ड्रिलिंग हैण्ड पम्प उपखण्ड, नागौर थे। उक्त वाद में श्रम न्यायालय बीकानेर द्वारा पारित अवार्ड दिनांक 4.1.89 के अनुसार औद्योगिक विवाद अधिनियम धारा 25 एफ की अनुपालना नहीं करने के कारण सम्बंधित पक्षकारों को मजदूरी, क्षतिपूर्ति एवं अन्य खर्चो का भुगतान करने के कारण राज्य सरकार को

निरर्थक हानि हुई जिसके लिये आप व्यक्तिगत रूप से जिम्मेदार हैं।"

From the perusal of the charge sheet it is apparent that the petitioner was posted as Assistant Engineer, PHD, Drilling Sub-Division-I, Nagaur from 1/1/1983 to 11/10/1984 only. The charge is in relation to effecting illegal retrenchment of two workmen, disputes in relation to which were subjected to labour court vide labour cases no. 2/87 & 3/87.

There is no dispute that both the workmen were retrenched simultaneously on the same date. The award dated 4/1/1989 in the case of Mohd. Habib is placed on record, which is Annex.9. The dispute referred is about the alleged dismissal of the workman on 29/12/1984 i.e. to say more than a month after the petitioner has ceased to hold the office of Assistant Engineer, Drilling Sub-Division-I, Nagaur. Wages upto 28/12/84 having been received by the workman under the order of Payment of Wages Authority under a separate order. Finding of labour court is that termination of services of the workman w.e.f. 29/12/1984 was without compliance of the directives of the Industrial Disputes Act, 1947. If the two orders were read together, the foundation of the charge sheet appears to be non-existent, from the order of

the disciplinary authority it appears that disciplinary authority assumed the termination to be due to order dated 1.10.1984, which was referred to in the award. However, that was not the order of termination but only calling options from the workmen. This monumental misreading of the award has led to imposition of penalty by the disciplinary authority. The order has been passed in mechanical manner without considering specific defence taken by the petitioner and without considering the award which was made foundation for issuing charge sheet against the petitioner.

In the circumstances, the order of punishment of the appellate authority and reviewing authority having been passed on non-existent material cannot be sustained.

Accordingly, this petition is allowed. The impugned orders dated 8/8/97 (Annex.12) passed by the disciplinary authority, 18/2/99 (Annex.13) of the appellate authority & 29/9/2000 (Annex.14) passed by the Reviewing Authority are all quashed. The petitioner shall get the cost of the petitioner, which is quantified at Rs.5000/-

(RAJESH BALIA),J .

Pankaj Baweja